



IN THE
SUPREME COURT OF THE UNITED STATES

1976 TERM

NO. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A Delaware Corporation,

Appellants,

-vs-

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK and BRONSON C.
LA FOLLETTE,

Appellees.

BRIEF ON THE MERITS IN
SUPPORT OF APPELLEES
SUBMITTED AMICUS CURIAE
BY THE STATE OF INDIANA

THEODORE L. SENDAK
Attorney General of Indiana

DONALD P. BOGARD
Chief Counsel

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 633-6249

IN THE
SUPREME COURT OF THE UNITED STATES

1976 TERM

NO. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A Delaware Corporation,

Appellants,

-vs-

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK and BRONSON C.
LA FOLLETTE,

Appellees.

BRIEF ON THE MERITS IN
SUPPORT OF APPELLEES
SUBMITTED AMICUS CURIAE
BY THE STATE OF INDIANA

THEODORE L. SENDAK
Attorney General of Indiana

DONALD P. BOGARD
Chief Counsel

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 633-6249

TABLE OF CONTENTS

| | Page |
|---|------|
| Table of Authorities | ii |
| Opinion Below | 2 |
| Jurisdiction | 2 |
| Consent of the Parties | 2 |
| Question Presented | 3 |
| Constitutional Provisions Involved | 3 |
| Interest of Amicus | 4 |
| Statement of the Case | 5 |
| Argument | 5 |
| Conclusion | 12 |

TABLE OF AUTHORITIES

Cases

Page

Bibb v. Navajo Freight Lines,
359 U.S. 529 (1959) . . . 11

Brotherhood of Locomotive
Firemen and Enginemen
v. Chicago, Rock Island
and Pacific Railroad Co.,
393 U.S. 129 (1968) . . . 9

Raymond Motor Transportation
Inc. v. Rice, 417 F.
Supp. 1352 (W.D. Wis., 1976) 2,6,8,9, 10

Royster Guano Co. v. Virginia,
253 U.S. 412 (1920) . . . 9

South Carolina State Highway
Department v. Barnwell
Brothers, Inc. 303 U.S.
177 (1938) . . . 6,7,8

Constitutional and Statutory Provisions

Article 1, §8 of the Constitution
of the United States. . . 3, 11

Fourteenth Amendment to the
Constitution of the
United States . . . 3, 9

Nineth Amendment to the
Constitution of the
United States . . . 3, 11

28 U.S.C. §1253 . . . 2

Other Authorities

Rule 42 of the Rules of the
Supreme Court of the
United States. . . 1, 2

IN THE

SUPREME COURT OF THE UNITED STATES

1976 TERM

NO. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A Delaware Corporation,

Appellants,

-vs-

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK and BRONSON C.
LA FOLLETTE

Appellees.

BRIEF OF THE MERITS IN
SUPPORT OF APPELLEES
SUBMITTED AMICUS CURIAE
BY THE STATE OF INDIANA

The State of Indiana, by Theodore
L. Sendak, Attorney General of Indiana,
and Donald P. Bogard, Chief Counsel, pur-
suant to Rule 42 of the Rules of the Supreme
Court of the United States, submits its

amicus curiae brief on the merits in support of the Appellees in the above-entitled cause.

OPINION BELOW

The opinion of the United States District Court for the Western District of Wisconsin (hereafter District Court) has been reported at 417 F. Supp. 1352 (W.D. Wis., 1976) and may be found as Appendix A attached to the Jurisdictional Statement.

JURISDICTION

This Court has jurisdiction to review this cause on appeal pursuant to 28 U.S.C. §1253 and has accepted it for such purpose by noting probable jurisdiction on March 7, 1977.

CONSENT OF THE PARTIES

The amicus curiae brief is filed by the State of Indiana pursuant to Rule 42 of the Rules of this Court and consent of the parties is not required pursuant to Rule 42 (4).

QUESTION PRESENTED

May a State regulate the size of trucks using its highways without violating the Commerce Clause of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Article 1, §8 of the Constitution of the United States provides in part:

Powers of Congress.

[3.] To regulate commerce with foreign nations and among the several states , . . .

The Ninth Amendment to the Constitution of the United States provides:

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment to the Constitution of the United States provides, in part:

. . . No state shall . . . deny to any persons within its jurisdiction the equal protection of the laws.

INTEREST OF THE AMICUS

The State of Indiana submits this brief since the issues in this cause are equally vital to Indiana and all other states in the Union. The decision of the District Court on the questions presented is proper and should be affirmed.

This case involves an attempt to challenge the validity of statutes and regulations of the State of Wisconsin which attempt to regulate the size of trucks using the highways within the State. Those statutes and regulations were valid enactments of the people of Wisconsin, and evidence their concern for the well being of all persons using the highways.

Indiana also has statutes dealing with the size of vehicles permitted on its highways. While those statutes differ from the statutes of Wisconsin, Indiana and Wisconsin should,

nevertheless, be entitled to independently determine how to best protect the interests of their citizens.

If the decision of the District Court is overturned, then the next challenge will likely be to the size restrictions enacted by Indiana or some other state. Thus, the rights of the states to protect the interests of their citizens will be eroded and eventually destroyed.

STATEMENT OF THE CASE

The amicus accepts and adopts the "Statement of the Case" contained in appellees' brief on the merits.

ARGUMENT

A STATE MAY GOVERN THE SIZE
OF TRUCKS USING ITS HIGHWAYS
BY STATUTE OR REGULATIONS WITHOUT
VIOLATING THE COMMERCE CLAUSE

In its opinion the District Court concluded:

The Court is of the opinion that, perhaps except under cir-

cumstances more compelling than those of the case at bar, the state of Wisconsin is entitled to choose the maximum length of the commercial vehicles using its highways without judicial re-evaluation of that choice
417 F. Supp. at 1361.

The Appellants ask this Court to overturn that conclusion by asserting that the methods adopted by Wisconsin burden interstate commerce beyond any legitimate local interests and that they discriminate against appellants. Therefore, Appellants assert, there is an unconstitutional violation of the Commerce Clause.

In South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938) this Court stated at page 184:

While the constitutional grant to Congress of power to regulate interstate commerce has been held to operate of its own force to curtail state power in some measure, it did not forestall all state action affecting interstate commerce.

Ever since Wilson v. Black Bird Creek Marsh Co., 2 Pet. 245, and Cooley v. Board of Port Wardens, 12 How. 299, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints.

and further stated, at pages 187-188:

But the present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. . . .

From the beginning it has been recognized that a state can, if it sees fit, build and maintain its own highways, canals and railroads and that in the absence of Congressional action their re-

gulation is peculiarly within its competence, even though interstate commerce is materially affected. Minnesota Rate Cases, 230 U.S. 352, 416. Congress not acting, state regulation of intrastate carriers has been upheld regardless of its effect upon interstate commerce. Id. With respect to the extent and nature of the local interests to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulations of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce.

There has been no action by Congress to regulate the length of trucks involved in interstate commerce, a fact acknowledged by the District Court, 417 F. Supp. at page 1359. It is clear that if Congress chose to enter this area of regulation it could have done so in the nearly forty years since the Barnwell case.

Appellants ignore the fact that Congress has not chosen to regulate the length of trucks used in interstate commerce,

and attempt to show that Wisconsin's regulations burden interstate commerce. The principal burden, however, appears to be economic and this Court has held that such an impact is not controlling. Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island and Pacific Railroad Co., 393 U.S. 129 (1968). The District Court also found economics not to be relevant below. 417 F. Supp. at page 1361.

The Fourteenth Amendment Equal Protection argument advanced by the Appellants is likewise not sufficient for this Court to reverse the District Court. It is well settled in Equal Protection litigation that the primary test is whether there is a reasonable relationship between the objective sought by the classification and the means used to achieve the objective. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920).

The objective being sought in this case is the safety of the people using Wisconsin's highways. Restricting the size of the vehicles using those highways is certainly a reasonable way in which to promote safety, and that there might be additional ways does not invalidate the method chosen.

As the District Court stated, at page 1359:

This Court cannot conclude the prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question do serve to implement various safety goals.

In addition to all of the above the State of Indiana would direct this Court's attention to the District Court's discussion regarding "judicial efforts to second-guess state highway regulations," 417 F. Supp. at 1361. If Appellants are

successful here, then the next point of attack will probably be to have the 65 foot restrictions declared invalid. After that, perhaps 75 foot, 85 foot or even larger trucks would be rolling over the nation's highways.

The regulations adopted by Wisconsin are not unique. Twelve other states have the same restrictions. 417 F. Supp. at 1361. Thus, this is not a situation like Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959) wherein only one state required the particular mud flaps in issue. This is a matter in which the people of Wisconsin have determined that safe regulation of their highways requires imposition of the 55 foot restriction. Indiana would assert that the right to make such a determination is a right granted to all states by the Ninth Amendment to the Constitution of the United States and is in no way prohibited by Article 1, §8 of the Constitution of the United States.

CONCLUSION

For all the foregoing, the Amicus
respectfully prays this Court affirm the
decision of the United States District
Court for the Western District of Wisconsin.

Respectfully submitted,

THEODORE L. SENDAK
Attorney General of Indiana

DONALD P. BOGARD
Chief Counsel

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 633-6249